

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MYRTIS PAULO HART,

Plaintiff,

v.

CV No. 21-1077 KWR/CG

FEDERAL BUREAU OF INVESTIGATION,
et al.,

Defendants.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on Plaintiff Myrtis Paulo Hart's *pro se Claim for Damage, Injury, or Death* (the "Filing"), (Doc. 1), filed November 5, 2021. Plaintiff, who is incarcerated at the Curry County Adult Detention Center, raises a federal tort claim in the Filing, vaguely alleging that during investigation, incarceration, probation, and parole, multiple crimes were attempted and committed against Plaintiff via FBI Communication/Broadcast. *Id.* at 1. The Court finds that the Filing is deficient because it is not in proper form, and Plaintiff has not paid the \$402.00 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs in proper form.

Plaintiff names, as a federal agency, the Federal Bureau of Investigation. (Doc. 1 at 1). He seeks \$750,000,000 in damages. *Id.* at 1-2. Although he does not expressly allege violation of any constitutional right, Plaintiff's filing may possibly be an attempt to assert prisoner civil rights claims under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). A civil rights complaint under 42 U.S.C. § 1983 or *Bivens* is the exclusive vehicle for vindication of

substantive rights under the Constitution. See *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (claims against state actors must be brought under 42 U.S.C. § 1983).

The Filing is not in proper form to assert civil rights claims and is not signed under penalty of perjury as required by Fed. R. Civ. P. 11(a). In addition, under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the federal filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has not paid the \$402.00 filing fee or submitted an application to proceed under § 1915 in proper form. He did submit a hand-written *Motion to File Under Forma Pauperis*. See (Doc. 2). However, the document does not contain the affidavit, financial information, or inmate account statement required by § 1915(a).

Plaintiff must cure the deficiencies if he wishes to pursue his claims. The deficiencies must be cured by no later than **December 9, 2021**. Plaintiff must include the civil action number, CV 21-01077 KWR/CG on all papers he files in this proceeding. If Plaintiff fails to cure the deficiencies by **December 9, 2021**, the Court may dismiss this proceeding without further notice.

IS THEREFORE ORDERED that, by no later than **December 9, 2021**, Plaintiff Myrtis Paulo Hart cure the deficiencies by (1) paying the \$402.00 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs (including the required 6-month inmate account statement) and (2) filing a prisoner civil rights complaint in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to

Plaintiff, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with instructions.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE